IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.126 OF 1991.

Smt. Hirabai w/o. Rama Kharade,
resident of Nandani,
Tal : Shirol,
District : Kolhapur.
as heir of the deceased Shirambai,
daughter of Masaji Kamble. .. Appellant
(Original Defd. No.1)

vs.

1. Smt. Muktabai Tatoba Sawant,
resident of Jaysingpur,
Tal : Shirol,

2. Parvati w/o. Shankar Kamble,
resident of Yalgud,
Tal : Hatkanangale,
Dist : Kolhapur.

3. Shankar Irappa Dhanavade,
resident of Nandani,
Tah : Shirol.

4. Sitarappa Irappa Dhanavade,
resident of Nandani,
Tah : Shirol.

5. Vasant Irappa Dhanawade,
resident of Dhanawad,
Tah. Shirol. .. Respondents.
(Original defd.no.2 and
plaintiffs.)

Mr. S.M.Kamble, Advocate holding for A.P.Mundargi,
Advocate for the Appellant.

Mr. S.S.Pandit, Advocate for the Respondent.

CORAM ; S.R.SATHE, J.

DATED ; 12TH AUGUST, 2004.

JUDGMENT :

1. Being aggrieved by the judgment and order passed by the Court of 6th Additional District Judge, Kolhapur in Civil Appeal No.45 of 1986, whereby the order passed by the Court of Joint C.J.J.d. Jaisingpur in Regular Civil Suit no.31 of 1978 decreeing the suit for partition and possession was confirmed and the appeal was dismissed, the original defendant No.1 has filed this second appeal. For the sake of convenience hereafter the parties shall be referred to as plaintiff and defendants.

2. Brief facts giving rise to this appeal are as under :

. The suit property which includes agricultural land and household property described in detail in para 1 of the plaint was initially owned by one Masaji Kamble. He died leaving behind three daughters namely Shirambai (original

defendant no.1), Janabai and Muktabai (original plaintiff no.1). During the lifetime of Masaji Janabai and Muktabai got married. The Plaintiff nos.2 to 5 are the children of Janabai. Shirambai remained unmarried. After the death of Masaji suit property was entered in the name of Shirambai. However, the said property was being enjoyed by Shirambai for herself as well as for and on behalf of the remaining two sisters.

. On 20.12.1977 the plaintiff issued notice to Shirambai and called upon her to give partition and separate possession of her share. Inspite of the receipt of notice Shirambai did not take any action for giving the plaintiff’s share. On the contrary, she started claiming that the entire property is owned by her and the plaintiff and other sister had no share in the same. Hence the plaintiff filed suit for partition and possession of her 1/3rd share in the suit property.

. The defendant no.1 Shirambai filed her written statement at exhibit 19 and contended that during her lifetime her father Masaji had given

the said property to her and as such the other two sisters had no share in the same. According to her when Masaji died he was infact not the owner of the suit property. She contended that so far as the land bearing survey nos.46 and 47 are concerned, the same have been purchased by her from one Bapu Mohan in the year 1938 and as such the said property is also exclusively owned by her. The defendant no.1 therefore prayed for dismissal of the suit. During the pendency of the suit Shirambai died and the defendant Hirabai was brought on record as legal heir of Shirambai. She filed her written statement at exhibit 40 and took similar contentions and prayed for dismissal of the suit. On these pleadings the learned trial court framed issues at exhibit 63. After considering the evidence adduced by both the parties the trial court came to the conclusion that the suit properties were owned by deceased Masaji and at the time of his death he was the owner of the said properties. The trial court also held that the agricultural lands bearing Survey Nos. 46 and 47 were not self acquired properties of Shirambai and as such plaintiff is

also entitled to claim the partition and separate possession in the said land. The trial court held that Shirambai, Janabai and Muktabai were each having 1/3rd share in the said property. Hence the plaintiff's suit for partition and possession was decreed in her favour.

. Being aggrieved by the said judgment and order the original defendant no.1 filed Civil Appeal No.45 of 1986. The Appellate court confirmed the finding recorded by the trial court and dismissed the appeal. Being aggrieved by the same the original defendant filed this second appeal.

3. The learned advocate for the original defendant/ appellant has argued only on the following substantial question of law :

> Whether in view of the provisions of Hindu Law as applicable to Kolhapur State, prior to the merger of the Republic of India the married daughters can have a share in the property belonging to the male dying

intestate living behind only the daughters, one unmarried and other two daughters being married during the lifetime of the deceased.

4. Though, initially in the plaint the plaintiff had averred that the suit properties were joint family properties of Masaji Kamble, the plaintiff had also averred that Masaji died intestate leaving behind three daughters, namely Shirambai (defendant No.1), Janabai and Muktabai (Plaintiff Nos.1). Admittedly Masaji died long back even much prior to coming into force Hindu Succession Act, 1956. Both the courts below, after considering the evidence adduced by both the parties came to the conclusion that the suit properties were owned by Masaji Kamble. Though the lands bearing survey nos.46 and 47 were purchased by Shirambai in the year 1938, Shirambai had no independent source of income and the said properties have been purchased with the nucleus of the properly which was initially owned by Masaji and which was in her possession after death of Masaji. Thus, there is no need to interfere with

the said finding of fact.

5. Once it is held that the suit property was owned by Masaji and he died leaving behind three daughters then naturally all the three daughters are entitled to have equal share in the property of Masaji. The learned advocate for the appellant strenuously argued before me that as per the law then applicable to Kolhapur State, the married daughter was not entitled to a share in fathers property. For that purpose he argued that such provision was embodied in "Hindu Kaydyache Nibandhak". However, the learned Advocate has not pointed out any specific provision embodied in Hindu Kaydyache Nibandhak. The extract from Hindu Kaydyache Nibandhak in respect of section 1 and 2 have been produced before me. However, in those sections it is not mentioned that the married daughter is not entitled for share in fathers estate. The said sections 1 and 2 speak about the rights that women who have been left as jogin/devdasi would get in her fathers property. Though it is alleged that the Defendant no.1 was jogin there is absolutely no specific evidence to

show that from the particular date the defendant no.1 was left as jogin. So the extract of Hindu Kaydyache Nibandhak produced by the appellant is of not use to the appellant.

6. The learned advocate for the appellant also strenuously argued before me that the defendant No.1 had infact become the exclusive owner of the suit property by virtue of section 14 of the Hindu Succession Act, 1956. In order to find out whether there is any substance in this argument, it would be worthwhile to see what section 14 says. It runs as follows :

> (1) "Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner."

Relying on the above mentioned section the learned advocate for the appellant canvassed before me that in the instant case when this above mentioned Act came into force, defendant no.1 was in possession of the suit property and as such she has become the absolute owner. It is true that from perusal of the 7/12 extract on record it can be seen that some lands were under cultivation of

the defendant No.1. However, merely because defendant No.1. was in cultivation of the said land, we cannot jump to the conclusion that the provisions of section 14 are applicable in the instant case. From the words " is full owner thereof and not as a limited owner" as given in the last portion of sub section 1 of section 14 it is very clear that legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In the instant case there is nothing on record to indicate that the property held/possessed by defendant No.1 was as a limited owner. Hence the provisions of section 14 of the Hindu Succession Act, 1956 cannot be made applicable in the instant case. Thus, both the grounds on which defendant No.1 was claiming exclusive ownership have failed. Both the courts below have rightly observed that after the death of Masaji , plaintiff No.1 and Defendant No.1 and Janabai had equal share in the suit property and as such the plaintiff is entitled to get partition and possession of her share . So also the defendant No.1 and Janabai are entitled to get property of their share. Thus, the judgment and

order passed by the appellate court is legal and correct. There is no necessity to interfere with the same.

. In this view of the matter there is no substance in this appeal. Appeal is dismissed with cost.

(S.R.Sathe, J.)